

MAINE LAND USE REGULATION COMMISSION

Department of Conservation
22 State House Station - Augusta, Maine 04333-0022
TEL (207) 287-2631 FAX (207) 287-7439

MINUTES

OF THE COMMISSION'S REGULAR MONTHLY MEETING

Meeting Date: June 6, 2006
Meeting Time: 10:30 a.m.
Meeting Location: Penquis Higher Education Center
50 Mayo Street
Dover-Foxcroft, Maine

COMMISSIONERS PRESENT

E. Bart Harvey, Chair	Ed Lavery
Steve Wight, Co-Chair	James Nadeau
Gwen Hilton	

STAFF PRESENT

Catherine M. Carroll, Director	Aga Pinette, Senior Planner
Scott Rollins, Division Manager	Caroline Elliott, Senior Planner
Fred Todd, Division Manager	Melissa Macaluso, Document Specialist
Sarah Giffen, Senior Planner	Tim Beaucage, Senior Planner
Sue Burna, Chief Planner	

OTHERS PRESENT

Doreen Sheive, Dept of Audit	Howard Weymouth, Katahdin Timberlands
Gordon Gamble, Wagner Forest	John Willard, Rockwood
Kevin Miller, Bangor Daily News	Sonja Belanger, Preti Flaherty
Jim Batey, SO Economic Development	Sharon Libby Jones, Greenville
Bob Guethlen, Tomhegan Twp	Judith Merck, SWOAM
Jeff Selser, Verrill, Dana	Paul Hatch, Somerset County Commissioner
Evan Richert, USM	Diano Circo, NRCM
Perry Ellsworth, Rangeley Town Manager	Scott Cole, Bethel Town Manager
Gary McGray, Franklin County Commissioner	Steve Steward, Town of Bingham
Dave Socolich, AR County Public Works Dept.	Steve Stanley, Penobscot CO Commissioner
Tom Lizotte, Pisc CO Commissioner	Tony Bartley, Pisc CO Commissioner
Matt Polestien, Millinocket	Jum Baley, Pisc CO Mayor

Robert DUnphy, SO CO
Commissioner

Ginger Davis, Preti Flaherty

Pat Stranch, MFPC

Fred Trask, Pisc CO Commissioner

Luke Muzzy, Plum Creek

Representative Duchesne, Hudson

*Note: Commission votes are recorded in the following order:
number voting in favor of a motion – number voting against a
motion – number abstaining – number absent*

ADMINISTRATIVE MATTERS

Introductions

Introductions were made by members of the Commission, the staff and the public.

Planning Matters

2007 CLUP

Facilities and Services provided to the UT

Dave Socolich, Bob Dunphy, Steve Stanley, Tom Lizotte and Gary McGray from Aroostook, Piscataquis, Franklin, Somerset, and Penobscot counties gave an overview to the commission on county budgets and stressed that service communities and facilities are experiencing a significant burden and pressure to provide increasing services to the UT. Allocations of money to municipalities and how rates are determined was discussed in detail. The panelists expressed how they would like to be more involved in the LURC developing and review process to help identify the level and location of services such as fire stations and solid waste facilities. The Commission discussed how they might address the concerns of the counties and service centers in the 2007 CLUP.

2007 CLUP-Recreational Resources, Preliminary Draft Chapter

Aga Pinette presented a preliminary draft of the recreational resources section of the 2007 CLUP. She summarized the changes between the 1997 recreational resources section and the preliminary 2007 draft. The changes include: Increased emphasis on principal value status; economic value of recreational resources to the state, jurisdiction, and neighboring towns; the value and presence of North Maine Woods, Inc., in providing for primitive recreational opportunities; changing land ownership patterns and conservation easements in the recreation landscape. Aga also summarized historic recreational use trends and future demand, recognizing an increased demand for both primitive and motorized recreation. Aga further discussed LURC's regulatory approach with regard to protecting recreational resources, and summarized the issues related to recreational resources (including public use of private land; impacts of development; recreational use conflicts; nature-based tourism; and issues facing commercial sporting camps). Aga also reviewed the proposed draft goal and policies for recreational resources. The Commission discussed the concept of accessible remote experiences, which fulfill a need for recreational access in remote areas that are close to communities.

2007 CLUP - Forest Resources Preliminary Draft Chapter

Sarah Giffen gave background information on the preliminary Forest Resources section of the Comprehensive Land Use Plan (CLUP), describing the changes made since the 1997 CLUP. Sarah described the remoteness and the relative absence of development of this forestland as the most distinctive of the jurisdiction's principal values. The forest inventory and forest use sections of the draft were discussed. Sarah further discussed LURC's regulatory approach, issues concerning land ownership trends, the increasingly

global market place for forest products, and trends toward new uses of forest products such as biofuels. The Commission discussed the wording of the goals and policies.

2007 CLUP Plant and Animal Habitat, Preliminary Draft Chapter

Caroline Eliot explained that two sections of the current Plan - Special Natural Areas and Wildlife and Fisheries - have been merged into a new section on Plant and Animal Habitat, reflecting a more holistic view of habitat and the species it supports. The jurisdiction has very high quality habitat which is regionally significant in the diversity and abundance of its native plant and animal species. Riparian areas, large unfragmented forested areas, and a range of more specialized areas are important terrestrial habitat. The jurisdiction has very high quality aquatic habitat compared to the Northeast. The Commission has a unique opportunity to maintain this plant and animal diversity. LURC regulatory tools include zoning, guiding the location of development away from important habitat, project review, and land use standards. Caroline discussed with the commission conflicts between uses of land and habitat values and the need to broaden habitat planning to the landscape level. Also discussed were fragmentation of habitat, changes in land ownership, the need to update fisheries and wildlife information used in the lakes program, and challenges associated with zoning of deer wintering areas.

Adjourn

The meeting was adjourned at 5:16pm.

*Respectfully submitted by
Melissa Macaluso, Data and Document Control*

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MINUTES

OF THE COMMISSION'S REGULAR MONTHLY MEETING

Meeting Date: June 7, 2006
Meeting Time: 8:30 a.m.
Meeting Location: Penquis Higher Education Center
50 Mayo Street
Dover-Foxcroft, Maine

COMMISSIONERS PRESENT

E. Bart Harvey, Chair	Ed Lavery
Steve Wight, Co-Chair	James Nadeau
Gwen Hilton	Steve Schaefer

STAFF PRESENT

Catherine M. Carroll, Director	Aga Pinette, Senior Planner
Scott Rollins, Division Manager	Caroline Elliott, Senior Planner
Fred Todd, Division Manager	Tim Beaucage, Senior Planner
Marcia Spencer- Famous, Senior Planner	Melissa Macaluso, Document Specialist
Bill Galbraith, Permitting and Compliance Division	
Ted Wolfertz, Regional Representative Greenville	

OTHERS PRESENT

Sonja Belanger, Preti Flaherty	Ginger Davis, Preti Flaherty
Diana Bowley, Bangor Daily News	Ron Way
Neil Pasltiwaite	Paul Bofinger, Parmachenee Lake

Patricia Nelson, Parmachenee Lake	Robert Nelson, Parmachenee Lake
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Robert Wlwellen, Parmachenee Lake	Peggy McGeehee, Perkins Thompson
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Edith Leary, Eaton Peabody	Carol-Ann Ouellette, Jackman
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Hope Jacobsen, Perkins Thompson	Jen Burns, Maine Audubon
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JT Horn, Appalachian Trail Conservancy	Bob Guethlen, Tomhegan Twp
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Diane Guethlen, Tomhegan Twp	Chuck Sawyer, Beaver Cove
Diano Circo, NRCM	Chip Aherns, Pierce Atwoods
Dain Trafton, Friends of the Boundary Mountains	Tim Pease, Rudman, Winchell
Hank McPherson, Burnt Jacket, LLC	Matt Miller, Burnt Jacket
Luke Muzzy, Plum Creek	Ron Kreisman
Ben Jenkins, Conservation Law Foundation	Jeff Thayler, Bernstein Shur
Andrew Strugeon, Ames	Bill Ferinand, Eaton Peabody
Howard Gautreau, Greenville	Fran Emmons, Piscataquis Observer
Ben Bragdon, Moosehead Messenger	Jeff Pidot, Attorney Generals Office
Elizabeth Swain, Gingold	Jym St. Pierre, Restore
Juliet Brown, Verrill Dana	

*Note: Commission votes are recorded in the following order:
number voting in favor of a motion – number voting against a motion – number abstaining – number absent*

ADMINISTRATIVE MATTERS

Introductions

Introductions were made by members of the Commission, the staff and the public.

Minutes of Previous Commission Meeting

The Commission voted 6-0-0-1 to accept the May minutes with corrections. The motion was made by Steve Schaefer and seconded by James Nadeau. Rebecca Kurtz was absent.

Director's Report

Staff News – Catherine announced that Steve Wight has been on the Commission for 19 years and thanked him for his service. Catherine stated Jeremy Pare had tendered his resignation effective June 9, 2006.

Saddleback

Catherine stated Saddleback Mountain has a pending application amendment for additional housing units, ski trails and snow making capacity. She asked if this could be authorized at the staff level. The Commission stated it would like to see a recommendation on the amendment.

Scheduling

Catherine and the Commission discussed logistics for upcoming meetings, a visit to a windpower development in Vermont, and a tour of the proposed Redington windpower development site.

Permitting and Compliance Matters

EC 05-47 Moosehead Marina

The Commission at its June meeting in Grand Lake Stream tabled EC 05-47, a signed settlement agreement with Mark Gilbert of the Moosehead Marina, as requested by Mark Gilbert and also recommended by staff. Mr. Gilbert requested to table the decision, even though he had signed the agreement, so that he could explore options having to meet a condition of the settlement agreement which requires having to wait 5 years to construct the boardwalk to allow for plant re-vegetation.

This condition was recommended by the State Soil Scientist. Mr. Gilbert and staff worked with the State Soil Scientist, but found this condition was the best option available.

The commission voted 6-0-0-1 to remove the settlement agreement from the table. The motion was made by Ed Lavery and seconded by Steve Schaefer. Scott Rollins relayed the results of the discussions with the State Soil Scientist, and asked for the Commission to ratify the Settlement Agreement.

The Commission voted 6-0-0-1 to accept the staff recommendation the motion was made by Steve Wight and seconded by Ed Lavery. Rebecca Kurtz was absent.

ULP 417A, Eastbrook Timber Company

Ted Wolfertz gave the background on the applicant's request to amend ULP 417 to install approximately 10,500 feet of utility line and poles along the eastern shore of Schoodic Lake. This would be an extension of the existing 21,000 feet of utility line approved by the Commission at their meeting in October 2005. Staff recommended approval based on their interpretation of the criteria and applying the same standards as were used for the initial approval in October. Ed Lavery reminded the panel that the applicant guaranteed that the line would not be extended. The Commission discussed concerns regarding possible lack of tech and financial capacity, and encroachment upon Sebois Lake. Ed Lavery was concerned with the proposal, not meeting Chapter 5, Section II, D, 2 of the Commission's Comprehensive Land Use Plan. He specifically stated that his interpretation was that the line extension would not meet the following provision of the CLUP"(c) located so as not to inappropriately encroach upon or change the character of remote areas, or produce an intensity of use that is inappropriate for a particular area." Ed Lavery made a motion to deny staff recommendation Steve Wight seconded.

The Commission voted 6-0-0-1 not to accept the staff recommendation and instructed the staff to write a recommendation for denial. Rebecca Kurtz was absent.

SP 5A, Bayroot LLC

Bill Galbraith gave the background on the staff recommendation to allow the relocation and sale of 5 lease lots previously approved under Subdivision Permit SP 5. In August of 1972, the Commission approved "LURC Project No. 5" authorizing the landowner, Brown Company, to establish a 19 site residential camp lease program within the company's 31,000 acre parcel in Lynchtown and Parmachenee Townships. In July of 2004, the applicant sought an advisory ruling seeking clarification of its rights with respect to exercising the 1972 Subdivision Permit SP 5. Staff responded with Advisory Ruling AR 04-39, indicating that Bayroot was authorized to lease the 19 sites as approved under SP 5, provided all terms and conditions of SP 5 were completed prior to October 1, 2004 when the authorization under that permit would otherwise expire. In September of 2004, the applicant informed staff that the terms and conditions of SP 5 had been completed. All approved sites, including the 4 required to be relocated pursuant to SP 5 were leased pursuant to the terms and conditions of SP 5, as clarified in Advisory Ruling AR 04-39. Staff recommended approval of the applicant's proposed amendment under the waiver provisions of Section 10.11 of the Commission's standards. The current leaseholders of the 10 existing leases that are currently developed with camps within this subdivision have expressed opposition to the applicant's proposed amendment

asserting that the Subdivision Permit SP 5 has expired because not all of the approved lots were developed prior to October 1, 2004 and that therefore, none of the as-yet undeveloped lots even continues to exist. The opponents also asserted that the Commission is not authorized to amend its subdivision permits for changes greater than 10% of the total project. The opponents requested that the Commission clarify just what the subdivision plan area was, and asserted that the original permit describes it as being the 31,000 acres originally proposed by Brown Company, and thus that any further division of land or development within the 31,000 acre area would require permit amendment approval. The Commission discussed at length the unique nature of the current proposal in light of the remote and historical significance of the area and the vintage of the original permit, which was approved at a time prior to the Commission's adoption of zoning rules specifically related to subdivision.

Commissioners expressed concern over future development on the lake, by way of exempt lot divisions of the applicant's land holdings, as well as concerns over the current proposal serving as a basis for meeting the adjacency requirement in the event of a future rezoning and/or subdivision permit approval were sought. Ed Lavery made a motion to table the issue and asked staff to explore limiting subdivision and development in the area, and to ensure that, if approved, the permitted development would not serve as precedent for determining adjacency in any rezoning petition. The Commission voted 6-0-0-1 to table SP 5A. The motion was made by Ed Lavery and seconded by Steve Wight. Rebecca Kurtz was absent.

ZP 702 Maine Mountain Power

Marcia Spencer-Famous gave brief background on fifteen requests for Intervenor status on a windpower project for Maine Mountain Power, and on one notice of participation as a government agency from the National Park Service. Intervenor status enables an entity to participate in a public hearing as a party, offer testimony, evidence, and participate in oral cross-examination.

Maine Audubon, the Appalachian Trail Conservancy, and the Maine Appalachian Trail Club opposed TransCanada's request to intervene, stating that they believe because TransCanada plans to propose a similar project, they could use this public hearing process to shape their cross-examination. After a brief discussion regarding TransCanada, The Commission voted 6-0-0-1 to accept staff's recommendation to grant Intervenor status to all parties requesting such status. The motion was made by Ed Lavery and seconded by Gwen Hilton. Rebecca Kurtz was absent.

ZP 701 Burnt Jacket, LLC

Scott Rollins gave the administrative history and background on ZP 701 request to rezone 246 acres of their property 1,720 acres to a residential development on the southeastern shore of Moosehead Lake in the Town of Beaver Cove. The property has previously been used for commercial timber harvesting. On October 5, 2005 the Commission granted the request for public hearing which was held on February 1st and 2nd in Bangor and February 7th in Greenville. Scott Rollins presented the specific criteria that must be met for a rezoning proposal and explained the conclusions that led to staff recommending denial of this rezoning. The Commission discussed in detail various aspects associated with the proposal. There was discussion that

potentially a subdivision could be allowed on this property if it were designed to be adjacent to similar development and scaled down in size. Hank McPherson stated he disagreed with the staff recommendation to deny, stating this would be an asset to town of Beaver Cove and The State of Maine. Steve Wight asked the petitioner if he had been given any input from staff on the size that might be allowable. He stated he had worked with staff and that they had mentioned the proposal should be around 30 lots and mentioned he thought that by lowering the original number of lots from 150 to 70 the proposal would be ok. Scott stated that the Augusta and Greenville staff had several pre submittal meetings with the petitioner and that it was relayed during those meetings that it would be very tough to propose much more than 30 lots in a location that wasn't adjacent to similar patterns of development. It became apparent that the petitioner would propose a design that would be an economic incentive. He said that staff takes pride in assisting applicants to shape their proposals to be consistent with the commission review criteria, but that at some point the staff sensed that the petitioner would be proposing something that could not necessarily be supported.

Ed Laverty stated the staff recommendation was thorough and thoughtful. He congratulated the staff for their good work.

The Commission voted 5-0-1-1 to accept staff recommendation. The motion was made by Gwen Hilton and seconded by Ed Laverty. Steve Schaefer abstained and Rebecca Kurtz was absent.

Commissioner Comments

Steve Wight asked for counsel on the commission's purpose for public hearings and how the commission should conduct themselves when receiving comments from the public. Jeff Pidot cautioned the commission that there will be plenty controversial matters coming before them than any other time in LURC's history and that the commission should continually focus on the guidance in the commission rules on receiving public comment. Jeff said that the commission's role is much like a judge who listens to a case, doesn't argue the case and makes up "his" mind based on the facts presented to "him". Jeff said that to act much like a judge is the safest and most appropriate way to accept public comment. Steve Wight commented that the public hearing process is an opportunity for the public to make themselves heard. Gwen added that it is incumbent upon the commission to also use the process as an opportunity to ask questions and seek information regarding a proposal that's before them. Jeff Pidot added that there's a fine line between asking questions and debating the issues during a public hearing and that debating the issues should come only during the deliberative process, after the hearing record is closed.

Adjourn

The meeting was adjourned at 3:02pm.

*Respectfully submitted by
Melissa Macaluso, Data and Document Control*